

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNEK LOWE,	:	Case No. 1:05-cv-117
	:	
Plaintiff,	:	Dlott, J.
vs.	:	Black, M.J.
	:	
HAMILTON COUNTY JOB &	:	
FAMILY SERVICES, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**REPORT AND RECOMMENDATION<sup>1</sup> THAT DEFENDANTS' MOTION TO  
DISMISS AND/OR FOR SUMMARY JUDGMENT (Doc. 48)  
BE DENIED AS MOOT**

On December 5, 2006, defendants filed a motion to dismiss and/or motion for summary judgment. (Doc. 48.) Thereafter, on May 22, 2007, plaintiff was granted leave to amend her complaint, and discovery was reopened until November 30, 2007. (*See* Doc. 74.)

Plaintiff then filed her third amended complaint on May 30, 2007, naming only Hamilton County Job & Family Services ("HCJFS") as a defendant in this action. (Doc. 75.) HCJFS, thereafter, filed a motion to dismiss and for judgment on the pleadings on June 6, 2007. (Doc. 77.)

This Report and Recommendation addresses only the earlier-filed motion to dismiss (Doc. 48).

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

Here, plaintiff's third amended complaint supersedes the original complaint and is the "legally operative complaint" in this matter. *Scuba v. Wilkinson*, No. 1:06CV160, 2006 WL 2794939, \*2 (S.D. Ohio Sept. 27, 2006) (citing *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir.2000), *cert. denied*, 533 U.S. 951, 121 S.Ct. 2594, 150 L.Ed.2d 752 (2001)). Since the amended complaint replaces the original complaint, the earlier-filed motion to dismiss and/or for summary judgment is moot. *See Chambers v. U.S.*, Case No. 1: 06 CV 911, 2006 WL 2482007, \*1 (N.D. Ohio August, 24, 2006); *See also Spokane County Legal Services, Inc. v. Legal Services Corp.*, Case No. C-76-289 433 F.Supp. 278, \*280 (D.C.Wash. June 23, 1977).

Accordingly, based on the foregoing, it is respectfully **RECOMMENDED** that defendants' motion to dismiss and/or for summary judgment (Doc. 48) be **DENIED as MOOT**. The more recent motion to dismiss (Doc. 77) remains pending.

Date: 9/28/07

Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge

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HAMILTON COUNTY JOB &	:	
FAMILY SERVICES, <i>et al.</i> ,	:	
	:	
Defendants.	:	<b>NOTICE</b>

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report and Recommendation within **TEN DAYS** after being served with a copy thereof. That period may be extended by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the Report and Recommendation objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to an opponent's objections within **TEN DAYS** after being served with a copy those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).